

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:11-CR-00336-RJC

USA

v.

ANTONIO MOSLEY

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ORDER

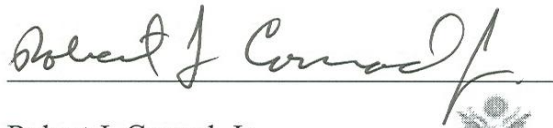
THIS MATTER comes before the Court upon the defendant's Motion to File Out of Time Appeal, signed on June 26, 2016. (Doc. No. 123).

In his motion, Defendant states that he never received a copy of the Court's Order issued on February 5, 2016, (Doc. No. 119), denying his sentence reduction motion, (Doc. No. 113), which he seeks to appeal. The alleged failure of a clerk of court to provide notice to a party does not affect the time to appeal or authorize the Court to relieve a party's failure to appeal within the allowed time, except as provided in Federal Rule of Appellate Procedure 4(b). FED. R. CRIM. P. 49(c). Rule 4(b)(1)(A)(i) requires a defendant to file a notice of appeal within 14 days of the entry of the order being appealed. Rule 4(b)(4) gives a court discretion to extend the appeal period up to 30 days upon a finding of excusable neglect or good cause. Here, the defendant's motion was submitted well after the allowable 30 day extension; therefore, he is not entitled to relief. United States v. Wilkerson, 238 F.3d 418 (4th Cir. Dec. 7, 2000) (unpublished) (dismissing untimely appeal for lack of jurisdiction where defendant claimed he did not receive copy of district court's order).

IT IS, THEREFORE, ORDERED that Defendant's Motion to File Out of Time Appeal, (Doc. No. 123), is **DENIED**.

The Clerk is directed to certify copies of this order to the defendant, counsel for the defendant, and the United States Attorney.

Signed: August 25, 2016

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

